

1 Michele D. Ross (CA 112014)
2 Reed Smith LLP
3 101 Second Street, Suite 1800
4 San Francisco, CA 94105-3659
5 Phone: 415-543-8700
6 Fax: 415-391-8269
7 Email: mross@reedsmith.com

8 *Attorneys for Wilmington Trust, N.A., as Trustee for Volkswagen Diesel Emissions Environmental*
9 *Mitigation Trust for Indian Tribe Beneficiaries*

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 IN RE: VOLKSWAGEN “CLEAN DIESEL”) MDL No. 2672 (CRB) (JSC)
14 MARKETING, SALES PRACTICES, AND)
15 PRODUCTS LIABILITY LITIGATION) **DECLARATION OF HAILEY E.**
16) **FIELD, ON BEHALF OF**
17) **WILMINGTON TRUST, N.A.,**
18) **AS TRUSTEE, IN SUPPORT OF**
19) **JOINT REQUEST**
20) **FOR COURT APPROVAL OF**
21) **MODIFICATIONS TO**
22) **THE INDIAN TRIBE TRUST AGREEMENT**
23 This Document Relates to:) Date: To be determined
24 *United States v. Volkswagen AG et al.,*) Time: To be determined
25 Case No. 16-cv-295 (N.D. Cal.)) Courtroom 6, 17th Floor
26) The Honorable Charles R. Breyer
27
28

1 I, Hailey E. Field, hereby declare:

2 1. I am the Product Leader and a Vice President covering the Large and Complex Trust
3 product in the Global Capital Markets Division of Wilmington Trust, N.A. I have held this position
4 since 2022 and I have been working in the Global Capital Markets Division of Wilmington Trust,
5 N.A. for over 13 years. Wilmington Trust, N.A. has been appointed as Trustee (the “Trustee”) of the
6 Volkswagen Diesel Emissions Environmental Mitigation Trust For Indian Tribe Beneficiaries
7 (“Trust”) by Order of the Court dated March 15, 2017, in *In re: Volkswagen “Clean Diesel”*
8 *Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 (CRB) (JSC), Dkt.
9 No. 3030. I am responsible for overseeing the administration of the Trust on behalf of Wilmington
10 Trust, N.A. in its capacity as Trustee.¹

11 2. To effectuate the terms of the Court Order dated March 15, 2017, the parties entered
12 into a written trust agreement which was approved by Order of the Court on September 19, 2017, in
13 *United States of America v. Volkswagen AG, et al.*, Civil Action No. 3:16-cv-00295-CRB (“U.S. v.
14 VW”), Dkt. No. 49. The fully executed final version of the written trust agreement was filed on
15 October 2, 2017. U.S. v. VW, Dkt. No. 51-2 (the “Original Trust Agreement”). The Original Trust
16 Agreement was modified several times, most recently on March 29, 2022. U.S. v. VW, Dkt. No. 86.

17 3. Attachment A to the United States’ Notice and Joint Request for Approval is a
18 proposed modified Trust Agreement. The Original Trust Agreement, all subsequent modifications,
19 and the proposed modifications in Attachment A are hereinafter collectively referred to as the “Trust
20 Agreement.”

21 4. I am familiar with the Trust Agreement, the day-to-day operations of the Trust
22 created thereunder, and the requirements in the Trust Agreement including, without limitation, those
23 in Section IV (Indian Tribe Mitigation Trust Beneficiaries) relating to becoming a designated
24 Beneficiary, and those in Section V (Distribution of Indian Tribe Mitigation Trust Assets) relating to
25 the distribution of Trust Assets, each as set forth in the Trust Agreement. Capitalized terms not
26 otherwise defined in this Declaration have the meaning ascribed to them in the Trust Agreement.

27 ¹ Pursuant to Rule 201 of the Federal Rules of Evidence, the Trustee respectfully requests that this Court take judicial
28 notice of the pleadings in the public record referenced in this declaration.

1 5. I am charged with the maintenance of the Trust Agreement, the Trust created
2 thereunder, and the other documentation maintained by the Trustee in the ordinary course of its
3 business relating to its administration of the Trust. This Declaration is based upon my review of the
4 Trust records relating to the Trust Agreement at issue in the above-captioned matter, my familiarity
5 with the Trustee's practices and procedures, and my involvement with the transactions discussed
6 herein.


7 6. In accordance with subparagraph 5.0.5.3.4, at the conclusion of the fourth funding
8 cycle in February of 2022, the Trustee calculated that approximately \$3.27 million would be
9 available, based on formula for the Tribal Subaccounts Remainder Balance, for a fifth funding cycle.
10 By comparison, approximately \$6-\$18 million was allocated during each of the first four funding
11 cycles. The Trustee then performed a hypothetical allocation using the \$3.27 million Tribal
12 Subaccounts Remainder Balance and, assuming that all 119 Designated Beneficiaries would
13 participate in a fifth cycle, estimated that allocations would range from approximately \$14,000 to
14 \$360,000. Pursuant to the Trust Agreement, the United States and the Trustee then conferred
15 regarding whether those funds were sufficient to hold a fifth funding cycle. See Trust Agreement ¶
16 5.0.5.3.4.

17 7. As part of that process, the United States invited the 119 Designated Beneficiaries to
18 participate in a listening session regarding disposition of the remaining Trust assets, including (1)
19 whether they would participate in a fifth funding cycle if one were held and (2) whether they would
20 participate in an allocated direct distribution of Trust funds to tribes to perform NOx mitigation
21 projects. The Trustee also participated in the listening session with the 119 Designated
22 Beneficiaries. The Trustee estimated at that time that a direct distribution of all funds that would not
23 be required to pay the Trust Administration Termination Costs, insurance premiums, and taxes,
24 would likely entail an allocated distribution range of approximately \$23,000 to \$588,000. Most
25 tribal participants favored the direct distribution of Trust funds for mitigation actions with flexible
26 project options.

1 8. No tribal participant opposed the direct distribution of Trust funds or the expansion of
2 the mitigation actions beyond the current list. The Trustee and United States have conferred and
3 agreed not to run an updated hypothetical allocation for the direct distribution using updated
4 numbers in order to conserve Trust resources. The figures previously used are for illustration
5 purposes and are **not** intended to be guaranteed amounts for the Final Distribution of Trust Assets to
6 Designed Beneficiaries. The actual allocation for the Final Distribution of Trust Assets will depend
7 on a number of currently unknown factors, including, without limitation, the actual remaining funds
8 available following the payment of Trust Administration Termination Costs, insurance premiums,
9 and taxes.

1 Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury that the facts set forth in the
2 foregoing declaration are true and correct to the best of my knowledge, information, and belief.

3
4 Dated: October 19, 2023

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6 Hailey E. Field
7 Product Leader and Vice President
8 Wilmington Trust, N.A., Trustee for the
9 Volkswagen Diesel Emissions Environmental
10 Mitigation Trust for Indian Tribe Beneficiaries
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